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COMMITTEE ON HEALTH AND HUMAN SERVICES
February 13, 1998
LB 1165, 1140, 1339, 1091

The Committee on Health and Human Services met at 1:30 p.m. on Friday, February 13, 1998, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1156, LB 1140, LB 1339, and LB 1091. Senators present: Don Wesely, Chairperson; Merton "Cap" Dierks; Deborah Suttle; and Nancy Thompson. Senators absent: Gerald Matzke, Vice Chairperson; Jim Jensen; and Kate Witek.

SENATOR WESELY: Members, I'd like to call your attention to the start of the hearing today. I'm Don Wesely, chair of the committee, from Lincoln. We're going to consider four bills. There is an agenda and the listing is in that order, on the agenda. The first we'll consider today is LB 1165. That's Senator Robak's bill. Now how many wish to testify on LB 1165? How many want to testify on that bill? (LB) 1165. Nope. I guess we got...should be a quick hearing, then. LB 1140, Senator Peterson's bill on pharmacy drug dispensing. How many want to testify on LB 1140? One, two. Two. Okay. And there's LB 1339, Senator Thompson's bill on pharmacy provisions. How many want to testify on LB 1339? One, two, three, four, five. A few more. And then my illustrious bill on nurse midwives. Anybody here want to testify on that bill? Whoa, got a couple, three people.

SENATOR DIERKS: We're going to be done by two o'clock, aren't we.

SENATOR WESELY: What's that?

SENATOR DIERKS: We're going to be done by two o'clock.

SENATOR WESELY: Well, it looks like it. There aren't very many people wanting to testify on any of these bills so we're going to be able, I think, to move fairly quickly through the hearings. But I am going to put a time limit on you, still, of approximately five minutes or so, so I would ask your indulgence to try and make your presentations along that line. There'll be a light there to give you guidance on that. If you want to testify, there's a sign-in sheet. I think it's been passed around, and if it has you should have signed in already. If you haven't, sign in after your

testimony, but be sure you sign in. When you come forward to testify, you state your name, spell your name for the record, the hearing is being taped and will be transcribed. You want to accurately spell your name. Then you take your time, your five minutes, to testify, then the committee can ask questions. The introducer opens on the bill, supporters follow. Opponents follow, and then neutral testimony is taken, and the introducer can close. With that, let me introduce members of the committee. To my...and we do a couple members who have had to leave this afternoon. I apologize for that but they had other obligations. But we have Senator "Cap" Dierks from Ewing, Nebraska. Next to Senator Dierks we have Senator Rick Hoppe (laughter), research analyst. Don't want to give him a pay cut, he's a research analyst. He doesn't have to be a senator. Meg Weber is our committee clerk. To her left, Senator Deb Suttle, from Omaha. Next to her left, Senator Nancy Thompson, from Papillion. So we're all set to go and we welcome our colleague, Senator Robak.

LB 1165

SENATOR ROBAK: Thank you, Senator Wesely. I'm here regarding LB 1165 which was introduced to require the consent of both the patient and a doctor before a pharmacist could make generic substitutions for a group of drugs called narrow therapeutic drug index. The FDA has scheduled a meeting to discuss this issue and the interested parties have agreed to delay the legislation, so I ask the committee to hold the bill in anticipation of an interim study resolution and reintroduce the bill next year, or some sort of bill next year. And I just...am asking you to hold the bill and not do it...take any action on the bill.

SENATOR WESELY: Oh. Okay. Well, any questions? I think that's pretty clear. Thank you.

SENATOR ROBAK: Thank you.

SENATOR WESELY: Appreciate it.

SENATOR ROBAK: That was quick.

SENATOR WESELY: Thank you. Well, we should call Senator Peterson, then, if you don't mind. Oh, you're here. Okay. Well, I will ask, though, one last time. Does anybody still want to testify on LB 1165? No. Okay. We're done with that. (Exhibits 1-5) We'll now go to LB 1140 and we had a couple of testifiers on that. So.

LB 1140

JOYCE MORGAN: (Exhibit 1) Mr. Chairman, members of the committee, my name is Joyce Morgan, M-o-r-g-a-n. I'm the legislative aide for Senator Chris Peterson who represents District 35. Senator Peterson is unavailable and has asked that I introduce LB 1140 on her behalf. LB 1140 amends existing pharmacy statutes to correct wording, harmonize provisions, and bring statutes into compliance with current practice. I will provide you with an abbreviated summary of the bill, and throughout my testimony will refer to sections in the bill in order to assist those wishing to follow along with different segments of LB 1140. In various Sections of

the bill, references to United States Pharmacopeia-Drug Information have been stricken and are replaced with the term, United States Pharmacopeia-Dispensing Information. The prior references were lifted from federal legislation and erroneously referred to this term rather than to Pharmacopeia-Dispensing Information. A provision will allow public health clinics to display the phone number of any poison control center rather than the Mid-Plains Control Center, although Mid-Plains is currently utilized by individuals in Nebraska, Iowa, and South Dakota. The fact that a public health clinic in western Nebraska may prefer to utilize the poison control center located in Denver, Colorado. Section 3 would require the dispensing of drugs and devices from a public health clinic will occur pursuant to a prescription written "on site" by a medical practitioner. The intent of the original law was to have a prescriber at the facility to issue prescriptions. Failure to require the prescription to be written "on site" could allow a medical practitioner unrelated to the facility to issue prescriptions. This amendment to 1140 simply adds an additional safeguard and ensures protection for the consumer. Amendments to allow for prepackaging of the drugs and devices dispensed from a drug dispensing permit site to occur at any public health clinic, is addressed. Under current law, unless prepackaged by the manufacturer, the drugs for each individual public health clinic must be prepackaged at that specific site. This will provide additional flexibility by allowing the prepackaging of drugs by a pharmacist for multiple public health clinics to occur at a single site. This amendment does allow the pharmacist, rather than taking all the paraphernalia to each site to distribute the drugs, would be able to prepackage the necessary drugs at one site and then simply deliver those to each site. This allows for the pharmacist to make better use and provide for greater productivity of their time. A requirement has been added for labels of containers to include the name and address of the public health clinic. This is similar to the requirement for general drug containers to include the name and address of the pharmacy on the label. Section 7 conforms the definition of medical practitioner to that contained within the section of Statute 71-1,142. In other provisions of law, this same definition of medical practitioner has been incorporated to avoid the necessity of the laundry list of providers which

is being replaced. The current laundry list does not recognize nurse practitioners who have prescribing authority and will be recognized by this reference in LB 1140. Currently, a pharmacist may only drug product select a product if the manufacturer performs certain services, including accepting returned products that have reached their expiration date and maintain recall capabilities for unsafe or defective drugs. In many cases, the pharmacist has provided...been provided with a product by a distributor or packager, rather than a manufacturer. The change proposed under subsection 5 of Section 8 recognizes the ability of the drug product select such product as long as the distributor or packager provides the same services currently required of the manufacturers under this subsection. A requirement for subsequent refills of a drug product to be distributed and manufactured by the same company as the drug product dispensed on the original prescription has been added. Current law only requires that the drug product be distributed by the same company. By including the manufacturer under those provisions, additional consistency in the product dispensed will be provided for the safety of the consumer. Section 10 contains clarification on who may exchange prescription drugs for medical reasons to alleviate a temporary shortage. Under current law, only holders of pharmacy permits may transfer the prescription drug for emergency purposes. This will be particularly helpful in rural areas where community hospitals may require the transfer of prescription drugs for emergency purposes. And with this proposed change, the community hospital would be able to receive the drugs from the local pharmacy and then could reciprocate by providing prescription drugs to the local pharmacy, if necessary, for emergency purposes. Section 11 is clearly technical in nature. Under the current law, limitations are placed on the amount of drugs that may be transferred for the emergency reasons. These limitations only allow transfers to the extent of 5 percent of the total prescription drug sales during any period of 12 consecutive months. This amendment simply clarifies that the time period during which the 5 percent of the gross revenue limitation is determined, is the immediately preceding calendar year. LB 1140 does not conceive any substantive changes to statutes for the practice of pharmacy. It is clearly technical in nature and in some cases provides clarifying language. The bill

establishes consistency with regard to prescriptions and thereby provides better protection for the public. I hope this explanation addresses any concerns you have with LB 1140. There are some additional testifiers following my testimony and they will be much more competent in addressing any concerns that you have. Thank you, and on behalf of Senator Peterson, I request that you advance the LB 1140.

SENATOR WESELY: Thanks, Joyce. Questions? Thank you. Appreciate that. Okay, we'll go to proponent testifiers.

JERRY STILMOCK: Good afternoon, senators. My name is Jerry Stilmock, testifying on behalf of the Nebraska Pharmacists Association in support of LB 1140. Ms. Morgan did a rather commendable job in expressing the position and the intent of the legislation and I don't feel it's going to be helpful for me to go through and re-read the specific points because they're so technical in nature. For the most part, they would be repeating themselves. But, principally, in Section 1, and then throughout the bill, there are references that were pulled into Nebraska law because of legislation on the federal level that referred to the United States Pharmacopeia-Drug Information instead of the correct term, United States Pharmacopeia-Dispensing Information. So that term is corrected throughout the bill. Section 2, as Ms. Morgan referred to, merely allows those parts of western Nebraska to call the poison control center in Denver, as well. So instead of saying, the Mid-Plains Poison Control Center, which is also utilized by Iowa, South Dakota, as well as the state of Nebraska citizens, the folks out there could go to the Denver poison control center. Section 3, as it states and as explained by Ms. Morgan, the on-site requirement right now would be specified that the medical practitioner must be on-site in order to write the prescription for that purpose. Also, Section 3, prepackaging of drugs. Right now, it has to happen at the site, and by the change in the law, would allow a pharmacist to prepare the prescriptions, the prepackaging of drugs or the devices, at one site and then dispense those throughout the networking of public health facilities...public health clinics. One of the, again, items contained in the bill at Section 3 would be the requirement that the name and address of the public health clinic be placed on the labels of the containers, much

as...the same way it's required of your local pharmacist when they fill a prescription. Their name and address has to appear on the label. The Section 7 of the bill would include, within the definition of brand name, the proprietary or trade name selected by distributors or packagers. Currently, the law only recognizes the brand name selected by the manufacturer is used when the prevailing practice actually within the industry is to recognize brand names selected by either the manufacturer or the distributor or the packager. The part of Section 7, again, just to conform...we were opening up the pharmacy statutes so we are asking that the reference to Section 71-1,142 be inserted instead of the laundry list that appears currently in the law. Section 8, currently a pharmacist may only drug product...select a product if a manufacturer performs certain services, including accepting returned products that have reached their expiration date and maintaining recall capabilities for unsafe or defective drugs. In many cases, however, the pharmacist has been provided with a product not just from the manufacturer but perhaps also from a distributor or a packager. And for that reason the bill recognizes that the ability to drug product select products as long as the distributor or the packager provides the same services as what is required now of a manufacturer. Under subsequent refills of the drug product dispensed pursuant to a drug product selection by the pharmacist would be required to be distributed and manufactured by the same company as the drug product dispensed on the original prescription. Right now we have a situation under current law that requires the drug product to be distributed by the same company. By including the manufacturer under these provisions, additional consistency in the product dispensed will be provided for the safety of consumers. Section 10 allows for the exchange of prescription drugs for emergency medical purposes to alleviate a temporary shortage. Right now, it's just retail pharmacy to retail pharmacy which may exchange for emergency purposes. The language in the bill would allow holders of pharmacy permits or holders of hospital pharmacy inspection certificate, or medical practitioners to transfer prescription drugs for emergency medical purposes. And then, finally, under Section 11, the limitations under current law are not that clear in terms of the amount of drugs which man be transferred for emergency medical

purposes so the modification would be such that the law would be changed so that it would be in a period of...the measuring stick, if you will, would be the immediately preceding calendar year, as compared to the twelve consecutive month language that is used in the bill...in the law right now. I'd ask the committee to advance the bill to General File.

SENATOR WESELY: Jerry, thank you. Are there questions? Appreciate you coming by.

JERRY STILMOCK: Okay. Thank you.

SENATOR WESELY: Next in support of LB 1140?

DYKE ANDERSON: (Exhibit 2) Good afternoon. Senator Wesely and members of the committee, my name is Dyke Anderson, spelled D-y-k-e A-n-d-e-r-s-o-n. I reside at 8200 Quarter Horse Lane, in Lincoln. I'm a licensed pharmacist and have practiced community pharmacy for 26 years and appear before you today representing the Nebraska State Board of Pharmacy, of which I have served as a member for the past eight years. The board is here today to simply echo it's support of LB 1140, which is simply a housekeeping bill to make minor corrections, additions, and changes to the Pharmacy Practice Act to make the provisions more uniform and complete. We also ask that you advance the bill to General File and we thank you for your consideration.

SENATOR WESELY: All right. Thank you. Are there any questions? Not a whole lot of current controversy in this one, huh?

DYKE ANDERSON: No.

SENATOR WESELY: All right. That's good. Thank you. Anybody else in support of the bill? Anybody neutral...opposed to the bill? Anybody neutral on the bill? Waive closing. That'll end the hearing on LB 1140. (See also Exhibits 3 and 4) Thank you all very much. We...er, yeah. Now we're ready for LB 1339. My colleague, Senator Thompson will open. As she's coming forward, we had five hands who want to testify on this. How many wish to testify

in support of the bill? Support, one, two, three. How many are in opposition to the bill? One, two. Okay, four, three. Okay.

LB 1339

SENATOR THOMPSON: Good afternoon, Senator Wesely, and members of the Health and Human Services Committee. For the record, my name is Nancy Thompson, state senator representing District 14. I appreciate the opportunity to present LB 1339 to you today and would like to take a few minutes to discuss my support for this piece of legislation. LB 1339 would clarify pharmacy provisions of Nebraska statute for companies that provide in-home renal dialysis for patients with chronic kidney failure. Most patients who need dialysis travel to hospitals and clinics for these services, usually several times a week, some often go daily. The services described in this bill are extremely important to over 325 Nebraskans who are able to receive kidney dialysis in their own homes. Currently, doctors train their patients in the use of these products and the companies supply patients with dialysis solutions that are delivered directly to their homes from warehouses throughout the country. This is a unique situation that has resulted in concerns regarding compliance with the Nebraska Pharmacy Act. Meetings with pharmacy representatives to find a reasonable regulation that will accommodate both the needs of these companies and oversight by the Board of Pharmacy have been very productive. I would like the thank the Pharmacy Association for their willingness to work with us to find a compromise solution to this important issue. You will have the opportunity to discuss any questions you have about this treatment with several subsequent testifiers. Dr. Tom Neumann, a nephrologist, who is also a board certified pharmacist, is with us today. And also two people, one who is a current patient and one who had a family member who was a patient, will follow me, be able to tell you why this is important that we act quickly and decisively, hopefully during this session, to try to resolve these issues because of the importance of the service that is provided through in-home dialysis. Although we don't have an amendment prepared in final form to offer you today, I hopefully will be presenting one to the committee next

week. I believe that we will be able to resolve this matter to accommodate the intent of Nebraska Pharmacy Act without creating an unnecessary burden to the companies involved. Thank you for the opportunity to present this bill to you. Before answering any questions you may have I'd like to provide, for the record, letters in support from Dr. Leslie Spry, a Lincoln nephrologist, who is also chairholder of the Commission of Legislation and Governmental Affairs for the Nebraska Medical Association, and Karen Robbins, who's president of the American Nephrology Nurses Association. (Exhibits 1 and 2) The American Nephrology Nurses Association represents 63 nephrology nurses in Nebraska. I'd be happy to answer any questions that you may have.

SENATOR WESELY: Thanks, Senator Thompson. Are there questions? I don't see any. Thank you very much.

SENATOR THOMPSON: Thank you.

SENATOR WESELY: Go to proponent testifiers, those that support the bill. If you're going to speak in support, you might want to come toward the front and get a chair up here and be ready to go.

SARAH JANE SCHROEDER: Good afternoon. My name is Sarah Jane Schroeder, S-c-h-r-o-e-d-e-r, and I reside at 1500 Cheyenne Street, here in Lincoln, Nebraska. I appear before you today in support of LB 1339. I hope the brief story I share with you today will illustrate just how important I believe it is to allow companies to continue to provide home delivery of dialysis supplies. In 1970 my father was diagnosed with acute renal failure. He was forty years old. As a disabled veteran, his medical care was provided by the Veterans Administration Hospital in Lincoln, Nebraska. After about 18 months of receiving hemodialysis treatments as an out-patient at the VA Hospital, he and my mother were chosen to participate in a pilot program which trained family members to perform hemodiaylsis treatments in their own homes. This program was based at the Veterans Hospital in Denver, Colorado. After a six week training period, my parents arrived back home in Lincoln, literally with a kidney machine in the backseat of their car, boxes of supplies to support the machine, and my father's treatment had already begun to arrive at our home. Thus began a

routine of supply delivery that would continue for the next 17 years. There were many components that contributed to the success of my father's treatments, but obviously a vital part of this program was receiving the medical supplies necessary to perform hemodialysis at home. Approximately every three months, my mother would complete an order form and send it off to the Denver VA Hospital. Shortly thereafter, trucks would pull up in front of our house and unload many large boxes of supplies. These supplies included such things as various needles and syringes, lidocaine, sterile pads, plastic tubing, dialysate solution, and saline solution. All of these items came sealed in sterile packages and were disposed of after only one use. My father was on the kidney machine three times a week so the number of boxes that arrived at our house was quite large. It would have been very difficult for our family if we had had to go somewhere to pick up all of these supplies. My father was not a physically strong man. My sister and I were fairly young. Most of the supply boxes were large and heavy and we didn't own a pickup truck. If the supplies would not have been delivered to our home, we would have had to hire someone or impose on friends to pick up and haul these many boxes to our home. Several years after my father began dialysis treatments our family was able to design and build a new home. Knowing that he would be using a kidney machine for the rest of his life, my father designed a special room in the basement of our new home for the machine and all of the attendant equipment and supplies. One very important additional feature of this new home was a staircase that went directly from the garage into the basement designed specifically for the purpose of assisting in the delivery of medical supplies. The truck drivers would take the boxes straight down the stairs to a storage area just a few feet from where my father received his treatments. It was very convenient for everyone. Families with special medical needs undergo different kinds of stresses than those of us blessed with good health. The ability to have medical supplies delivered directly to our home, literally into our basement, relieved my parents of just one little stress associated with my father's medical condition. I urge you to advance LB 1339 to the floor of the Legislature. Thank you very much.

SENATOR WESELY: Thank you. Are there questions? Thanks

for sharing that with us. We appreciate it.

ROBERT SHENAMAN: My name is Robert Shenaman, 1309 Elba, S-c-h-e-n-a-m-a-n and I am in support of this bill because we have a phone number that we call every month giving us to the people at Baxter and we tell them what our supplies we have left and they tell us what we are going to get for the next month, because we get our supplies once a month, now. And they call us every Friday before the delivery date to tell us what time those men will be here. And those men are right on that time. They're very polite, very courteous men. They put your supplies right where you want them. And we have...it just is impossible for me, for one person, to lift even one case of those boxes because I have a 20 pound capacity of which I can lift. Each box weighs 26 pounds. These men put these boxes right exactly where you want them. And it's a very easy thing for them to do and they're very polite, like I said. They do their job very efficient. They're very polite, do everything right for you. I'm not even able to pick up my two year old twins now because they weight more than 20 pounds. And if they have any problems, they ask you every time they deliver, if you have any problems, if you can...if they can help you in any way, do anything for you. And if you need any extra supplies between the pickup times, they will always come by and lift off whatever you need. They will always call you, in fact, I had the lady call me twice today to make sure everything was all right with me because I've been on dialysis for about a year now, and I do a solution change four times a day. So they really keep up on what my needs are and what my medicines are and see that everything is there at all times. I think that it would be a difficult thing for me to go pick up these supplies, in fact, I know I could not do it. These people do it right away and do everything accurately. The Dialysis Center here in Lincoln also keep up with you and they ask you questions and make sure everything is right. Dr. Spry and Dr. Marples are right on your case. They really watch everything. They really keep up with all your treatments. They keep up with your bloods. I have diabetes too and they make sure everything is right with my diabetes and the solution changes to make sure I get the right insulin in each bag. And they just do everything perfect. I guarantee you there is no better doctors or no better nurses that I have found in the thirty years that I

have sicknesses and illnesses. These people really are on the ball. They do everything right. Baxter, I know, every time I have any problem, I call them and they get the solution right to me and they get everything straightened out with me. They do a real good job and I see no reason to change any of what the way they are doing things. I am in full support of Senator Thompson's bill.

SENATOR WESELY: Thank you, Mr. Schenaman. Are there questions? Thanks for coming by. We appreciate it.

ROBERT SCHENAMAN: You bet. Thank you.

SENATOR WESELY: Is Dr. Neumann next, or...?

THOMAS NEUMANN: Senator Wesely and members of the committee, my name is Doctor Thomas Neumann. It's N-e-u-m-a-n-n. My office address is 710 South Tower Doctor's Building, and that's in Omaha, Nebraska. I am here wearing, I guess, several hats. One thing I want to submit to the committee is a letter of support of LB 1339 from the Renal Physicians Association. (Exhibit 4) I'm here as a representative of the legislative committee, both locally...or in the state, as well as nationally, for the Kidney Foundation. I'm also here as a practicing nephrologist who practices at eight different hospitals in the Omaha-Council Bluffs area, also for my partners in Omaha Nephrology, and, as my wife reminded me last night, as the father...or the son-in-law of a dialysis patient who has recently started, as well as a board certified pharmacist who has not practiced since he's had his medical degree. I'll read to you a short introduction. We've gone over many of these things. I think the patients have explained a lot of it to you much better than I could. As you know, end stage kidney disease is an ailment that is chronic in nature. It afflicts a small percentage of patients, yet it's a significant percent, both of the number of patients that it...that are involved, as well as the cost of the programs involved in administering them care. These patients have choices between kidney transplantation, as well as the...which, unfortunately, we have a shortage of organs. This takes a long time no matter how healthy and well prepared the patients are, therefore they need dialysis. There are two types available. There's

hemodialysis, which is usually done in a center, although there are patients who do do this in their homes, as well as peritoneal dialysis, and this is primarily the patients we'd be discussing with this bill. These patients put fluid into their abdomen to, three to four to five times a day, to make exchanges to get rid of the toxins that build up in patients who are...who have kidney failure. This practice that is in place now has been a practice and a system that has been devised over...well over fifteen to twenty years. And, Senator Thompson, the only thing I would like to state to correct you in your introduction is the fact that the doctors prescribe and help with training. The nurses are the primary trainers of these patients and the nurses continually are in contact with these patients, almost on a daily basis, early in their time on dialysis. By requiring that we involve others in this process, whether it be pharmacists or anyone else, will actually increase the burden and expense to the patients. It will cause another area for errors to be made and problems to occur that is not present currently. Having been a pharmacist, I know what's involved in the practice of pharmacy because I was a practicing pharmacist. I did not go right from pharmacy school to medicine. I practiced for about six years, if you count my time as a...in medical school as well as my time before going to medical school. I practiced in both hospital and in retail pharmacy. There are no medications, per se, that are administered to patients through dialysis that are not prescribed by a physician or that are not truly filled by a pharmacist. If you're adding things to the bags that are put into the abdomen, if they are antibiotics, they are given...they are prescribed by a physician and dispensed through either a hospital or a pharmacy in a community. Other additives are handled in the same way. The solutions are nothing but sugar water with the appropriate elements necessary to correct the blood chemistries of the patients involved. And there are really no reasons that I can see at this point to change the practice that is presently being undertaken at this time. I would entertain any questions anyone would have.

SENATOR WESELY: Doctor, thank you. Senator Suttle has a question.

THOMAS NEUMANN: Yes.

SENATOR SUTTLE: Did you say that...when I first heard about this I thought they meant hemodialysis. Did you say there were some home hemodialysis?

THOMAS NEUMANN: There are home hemodialysis patients but even their medications that they administer, these medications are supplied through either the hospital pharmacy, say, through say Clarkson Hospital, one of the hospitals in Lincoln, or their hometown retail pharmacies will stock specific medications they may need that would be administered. If they are dispensed, one of the products that I think most of our patients are on is call Epo which is a product which can improve the blood counts in patients so they're no longer as anemic. And that medication is actually dispensed through our system via a pharmacy that we have arranged to have this done through, and at the Kidney Center at Clarkson, it's through our hospital...it's through the hospital pharmacy.

SENATOR SUTTLE: What is the solution? Tell me exactly. You said...

THOMAS NEUMANN: It has...

SENATOR SUTTLE: ...it's D5W.

THOMAS NEUMANN: Well, no. It's 1.5, 2.5, or 4.25 percent dextrose, or sugar water, in those percentages. It contains sodium. It contains acetate, a small amount of magnesium, some calcium in varying proportions, and a few other elements, as well.

SENATOR SUTTLE: Thank you.

THOMAS NEUMANN: Um-hum.

SENATOR WESELY: Other questions? Thank you.

THOMAS NEUMANN: Thank you.

SENATOR WESELY: We appreciate you coming by. Next, please, in support.

DONNA BOWER: Good afternoon. My name is Donna Bower, spelled B-o-w-e-r. I live at 800 Connecticut Avenue in Washington, D.C. Good afternoon, Chairman Wesely, and members of the committee. I'm director of state affairs for Baxter Healthcare Corporation. Baxter is a major developer and manufacturer of medical products and we're a global leader in the treatment of end stage renal disease. I'm here to ask for your support of Legislative Bill 1339 which would legally authorize the current practice of home delivery of dialysis solutions and devices under the regulation of the Board of Pharmacy. Baxter had thought, at least our business people had thought some years ago, that we delivered products on behalf of the physicians. However, a couple of years ago, our lawyers made a review of all the state pharmacy laws and thought that we were technically dispensing drugs direct to consumers. So we have, in the last two-three years, approached state Boards of Pharmacies and legislatures in order to craft language that would put us in full compliance with each state law. Baxter delivers, as you've heard some of the patients say, about 500 to 1,000 pounds per month of dialysis solutions and supplies and we have currently about 325 Nebraska patients we deliver to. We are the manufacturer of the dialysis solutions and we manufacturer them in U.S. FDA approved and inspected manufacturing plants in Arkansas and North Carolina. The large bags of solutions, and I've seen them, they are about this big, of water, as is you can imagine, heavy water bags, are packed and sealed in cardboard boxes and labeled at the manufacturing plant. These boxes are then shipped to distribution warehouses throughout the U.S. including the one we have in Omaha. Baxter receives an order or a prescription for a specific patient from his or her physician which is entered into our main computer at our corporate headquarters in Illinois. The doctor is the one that determines the patient's needs and the monthly order parameters. The order then prints out at our Omaha distribution facility. Supplies are then picked and assembled and shipped in their original manufactured sealed cartons according to the order. I've been to some of our distribution centers and we have a pallet, each patient has a pallet and only those boxes of solutions go on that pallet. The order is checked three times against the order the physician comes out, for accuracy, and each person that picks and packs the order on the patient's pallet must sign

and initial this. Their pay and their continued employment is determined on how accurate they are. Supplies are then loaded onto small trucks where our service specialist, again, rechecks the order before delivering it to the patient home or other location. I might also add my father-in-law was on Baxter's peritoneal dialysis service. He lived in Cincinnati and when he came to visit me in Washington, Baxter delivered to my house. He also took cruises and Baxter delivered the product on the cruise ship. So he could lead a normal retired life and enjoy himself. A typical monthly supply includes large bags of dialysis solutions, tubing to connect the bag, which is usually suspended, to the abdomen, some face masks, bandages, tape, sometimes syringes. The patient receives the items, everything they need, in large boxes, delivered inside their homes from the Baxter service specialist every month. The tenure of most of these service specialists is ten years. And I know from my father-in-law, it was the same fellow every month. He got to know him and he enjoyed working with him and the service specialist becomes really a friend to the family. They also rotate the newest, freshest product in back and move the older product forward for the patient. Medicare pays for all the services surrounding dialysis therapy. Medicare, that's the federal program for senior citizens. And dialysis is the only therapy Medicare pays for, even if you're not a senior citizen. This includes a supply of drugs to the patient prescribed by the physician and the drugs must be supplied by an approved Medicare provider. Therefore, they must be supplied by either a dialysis clinic or an approved supplier like Baxter. Patients cannot be reimbursed for drugs from a pharmacy not approved as a Medicare provider. I'm proud that Baxter's quality and cost effective service has helped bring freedom and independence to dialysis patients around the country for over twenty years. We ask for your support for a system that works and benefits. And I'd be happy to answer any questions and I also have a brochure on Baxter to pass out. (Exhibit 5)

SENATOR WESELY: Thank you, Ms. Bower. Senator Dierks.

SENATOR DIERKS: Donna, what's actually happening here is you are trying to bring to our state the ability for your company to go ahead and do things as you've always done

business. In other words, it's your initiative that brings this legislation here, is that right?

DONNA BOWER: Yes, it is my initiative. Yes, it is Baxter's.

SENATOR DIERKS: Thank you.

DONNA BOWER: I think that usually the pharmacy laws are written for retail pharmacy stores and this is kind of a different type of service that doesn't fit in any real category. Thank you.

SENATOR DIERKS: Would this affect any other type of medical delivery...

DONNA BOWER: No. No.

SENATOR DIERKS: ...pharmaceutical delivery.

DONNA BOWER: This is specific to home dialysis drugs and devices.

SENATOR DIERKS: Um-hum. Thank you.

DONNA BOWER: Um-hum.

SENATOR WESELY: Are there any other questions? Thank you.

DONNA BOWER: Thank you.

SENATOR WESELY: Appreciate you coming by.

DAVID BUNTAIN: Senator Wesely, members of the committee, my name is David Buntain, B-u-n-t-a-i-n. I'm a registered lobbyist for the Nebraska Medical Association. I will be very brief. I hadn't really planned to say anything but I was...did see a copy of a letter than you have received from the Board of Examiners in Medicine and Surgery and I believe there's also one from the Board of Examiners in Pharmacy that indicates that they are opposed to the bill. And I...it's very rare that we're expressing an opinion contrary to the Board of Medical Examiners but I...my understanding is that there have been discussions between the proponents

of this bill and the representatives of the Pharmacy Association that would narrow the gap between the two in a way that I think would make sense. I think Senator Thompson alluded to the possibility of some amendments this next week. We, obviously, think that the system, as it's currently being administered is effective. It's safe and it's really a matter of bringing our state statutes into a technical situation where this can continue. This is done under the auspices of physicians with highly trained technicians and nurses that work with them. And we're not aware of any problems that have come from this. I understand the concern that the pharmacy profession has about this going around their laws. And it seems to me there should be a way to work this out so that it's acknowledged within the pharmacy law but that it can continue to be done in it's...in the way that it's being done. So we support 1339.

SENATOR WESELY: Thanks, Dave. Are there questions of Mr. Buntain? David, what letter are you referring to? The Board of Medicine and Examiners?

DAVID BUNTAIN: I've been shown a letter that was written to all of the committee members dated February 11 from the Board of Examiners in Medicine and Surgery and I believe there's also one from the Board of Examiners in Pharmacy. It's addressed to you and the members of the committee.

SENATOR THOMPSON: It was delivered to my office. Maybe...I'd be happy to make copies and share (inaudible).

SENATOR WESELY: Are they in opposition to the bill?

DAVID BUNTAIN: Correct.

SENATOR WESELY: I haven't seen that. But I'm glad you brought it to our attentions, so...

DAVID BUNTAIN: Well, maybe I shouldn't have.

SENATOR THOMPSON: Well, maybe they've changed their mind. (laughter) Ooops. Never mind about those letters.

SENATOR WESELY: I'm sure it's in the main somewhere. Thank

you.

BILL MUELLER: Mr. Chairman, members of the committee, I'm Bill Mueller. I'm an attorney and a lobbyist appearing before you today representing Baxter Healthcare Corporation. Unfortunately Dave Buntain just informed you of the opposition of the Board of Examiners of Medicine and the Board of Pharmacy. I wanted to come up and, first of all, claim authorship of 1339. (LB) 1339, as introduced is an exemption for a company like Baxter, manufacturing and distributing dialysis drugs and devices. What we are talking about with the Pharmacy Association and the Pharmacy Board is not an exemption, but instead it is a regulatory scheme that acknowledges the unique nature of this type of situation. What we are looking at is requiring that companies who distribute drugs and devices like those for kidney dialysis obtain a drug dispensing permit from the Board of Pharmacy that a company like Baxter would employ a consultant pharmacy, or would contract with a consultant pharmacist, I misspoke, who would have the legal responsibility over this operation. I thank publicly the Pharmacy Association, Bob Hallstrom and Tom Dolan, for being willing to sit down with us and try and craft a way that we can keep in place the current procedure. I would point out that, although I've not spoken directly with the Board of Examiners in Medicine and Surgery or the Board of Examiners in Pharmacy, I assume that their opposition is to LB 1339 as introduced, which would be a complete exemption bill. What we intend to come back to you with would not be an exemption, but it would use existing statute and provide that companies like ours would obtain a drug dispensing permit. I'd be happy to answer any questions that the committee may have.

SENATOR WESELY: Okay.

BILL MUELLER: We will get back to you with an amendment.

SENATOR WESELY: Senator Dierks.

SENATOR DIERKS: Well, I should have asked Dr. Neumann, I think, but I was asleep at the switch. Bill, are you familiar with the...he mentioned something about using like an abdominal or a peritoneal device. Is that...are you

familiar with the process that they give the medication through?

BILL MUELLER: I'm generally familiar.

SENATOR DIERKS: Is there some sort of a permanent...

BILL MUELLER: Yes, there is.

SENATOR DIERKS: ...shunt in the abdominal cavity?

BILL MUELLER: Yes, there is. There is a permanent...

SENATOR DIERKS: Do they call it an infusaport, or something like that?

_____: Catheter. (Also same from crowd)

BILL MUELLER: Catheter.

SENATOR DIERKS: Catheter.

BILL MUELLER: There's a permanent catheter that is surgically placed and the patient then takes in the fluid and discharges the fluid through that catheter.

SENATOR DIERKS: This is really the only...and there's, you know, this is the only medical procedure that this would be used for in the home?

BILL MUELLER: We have drafted rough drafts of our amendment to specifically provide that dialysis drug or device distributors would obtain a drug dispensing permit and that definition would be a manufacturer or wholesaler who provides dialysis products and supplies to persons with chronic kidney failure for self-administration at the presents (phonetic) home or specified address upon the prescription of a pharmacist...upon a prescription of a physician. So we are drafting this as narrowly as we can.

SENATOR DIERKS: Good. Thank you.

SENATOR WESELY: Questions of Mr. Mueller? Thank you. Appreciate you coming by.

BILL MUELLER: Thank you.

SENATOR WESELY: Anybody else wishing to testify in support? If not, we'll go to opposition. If you wish to oppose the bill you might come toward the front of the room. You can sign in later, Tom.

TOM DOLAN: Pardon?

SENATOR WESELY: You can sign in later.

TOM DOLAN: I'm sorry. I still didn't hear what you said.

SENATOR WESELY: Sign in later.

TOM DOLAN: Okay. Thank you, Senator. Senator Wesely and senators, I am Tom Dolan, that's D-o-l-a-n. I am the executive director of the Nebraska Pharmacists Association. I have already given to the staff a letter that addresses most of the particulars of why we're opposed to the act as originally introduced. (Exhibit 7) We have talked to Senator Thompson and to the people, the lobbyist, and the Board of Pharmacy and I guess the reason that the Pharmacists Association is particularly concerned always is the last several years we've had lots of people who only wanted their product or their particular type of service to be exempted from the Pharmacy Practice Act. We could have several people running around doing their thing. We believe that the Pharmacy Practice Act was initiated by the senators for the protection of the public and therefore we don't really think that someone who is practicing pharmacy should be exempted, but rather they should be looked at in the regulatory process just like anyone else. Our concern, I think Baxter is absolutely right when they said that their attorneys felt they might be out of line. We think they are practicing pharmacy as it is in our laws today, their practice would be somewhat viewed as being not quite legal. But, again, we've never heard of anyone being harmed. Obviously Baxter is here to take care of people and to provide the service that they desperately need and we are all in favor of that. I think, Senator Thompson, one of the things I have learned since I talked to you, I guess, in other states where this bill has been looked at, Baxter has

gotten the pharmacy permit, a special type of permit which addresses their concerns and their needs and it still gives the state the regulatory authority that they believe is necessary also. So I think, very quickly I think, we could come to some conclusion on this. It isn't, you know, we're not directly opposed to them doing this and we'd have a fit. I believe everybody, both opposition and the affirmative, would work together, we would be able to solve this problem. Okay? Any questions?

SENATOR WESELY: Tom, thank you. Are there questions of Mr. Dolan? Yeah, Senator Dierks.

SENATOR DIERKS: So you have no problems with the legislation, then, Tom, after the amendment that you're getting prepared is adopted?

TOM DOLAN: We...the opposition is we don't believe anyone should be exempted from the regulatory system or the scrutiny by oversight, but we believe that we can very easily get, instead of an exemption, give them something the Board of Pharmacy can provide them with a permit...

SENATOR DIERKS: A permit...

TOM DOLAN: ...to allow them to continue to do this.

SENATOR DIERKS: But that's going to happen by way of an amendment that you're...

TOM DOLAN: Right.

SENATOR DIERKS: Thank you.

TOM DOLAN: Um-hum.

SENATOR WESELY: Questions? Tom, thank you. We appreciate your help on this issue.

DYKE ANDERSON: Again, good afternoon. My name is Dyke Anderson. Do you want me to spell it again?

SENATOR WESELY: Not again, no.

DYKE ANDERSON: (Exhibit 8) No. Okay. Again, I'm representing the Board of Pharmacy. The Board of Pharmacy, of course, is responsible for the licensure and regulation of pharmacists, pharmacies, and wholesale drug distributors, and in developing, implementing, and enforcing uniform standards of the profession for the primary purpose of protecting the public health. The Board of Pharmacy is opposed to LB 1339 as introduced, as you've already heard, which would exempt manufacturers or distributors of dialysis solutions and devices from the practice of pharmacy. While it appears that the current company represented here today is doing a fine job of providing these solutions and supplies to their patients, we know there are other manufacturers and distributors able to provide these same solutions and supplies. We submit to you that not all of these companies have the same comprehensive program in place to provide the quality control and support for these end stage renal disease patients. By having these companies comply with the current laws, and we're talking about, you know, this same compromise, the Board of Pharmacy is in support of the compromise that's been alluded to, it ensures that the Board of Pharmacy would have oversight of these operations and, in the event of a problem, we would be able to seek accountability of policies and procedures of the offending company to better protect the health of these citizens of the state. To paraphrase the Baxter Healthcare Corporation manager of pharmacy affairs, we believe it is appropriate that distributors of dialysis supplies to Nebraska home renal patients be reasonably regulated in order that such patients are guaranteed safe and reliable products. The Board of Pharmacy agrees with this statement wholeheartedly. On a personal note, our youngest son who is eighteen years old was diagnosed with IgA nephropathy, the most common chronic kidney disease, three and one-half years ago. It is entirely possible our son, my wife, and I, may be faced with him undergoing this kind of dialysis treatment someday. As concerned parents, we want to ensure that our son is able to receive safe and reliable products from whichever supplier his physician would recommend, and if quality is compromised in the distribution system, that we would have recourse through the state agency to take action against the offending company. Again, the Board of Pharmacy is in support of the compromise that hopefully we'll be able to work out and I thank you for your consideration.

SENATOR WESELY: Thanks, Mr. Anderson. Senator Dierks.

SENATOR DIERKS: Dyke, you probably have a little more personal knowledge of the disease than a lot of people have. Is there a increased number of people on dialysis over the years? Is there an increasing, percentage-wise, of...?

DYKE ANDERSON: Yes, there is. And one reason, for instance, my son's kidney disease can only be diagnosed through biopsy. And, in recent years, or previous to, you know, the last five to seven years, there weren't a lot of biopsies done and so I don't think there was a really a good handle. Currently, there's estimated about 325 patients in the state that are undergoing the peritoneal dialysis system that is being delivered the services by Baxter Healthcare.

SENATOR DIERKS: So, you're son's how old?

DYKE ANDERSON: He's eighteen.

SENATOR DIERKS: Eighteen. And was just diagnosed?

DYKE ANDERSON: Three and a half years ago.

SENATOR DIERKS: Oh, I see. So he was like fourteen or...?

DYKE ANDERSON: That's correct.

DYKE ANDERSON: Oh. Thank you.

SENATOR WESELY: Other questions? (Inaudible)

DYKE ANDERSON: Thank you.

SENATOR WESELY: Thanks. Anybody else in opposition? Anybody neutral? No? Want to close?

SENATOR THOMPSON: Thank you. Just a couple of comments. Clearly, we'd like to arrive at a compromise that works well for everyone in this regard. We've had a system of providing this type of service for Nebraskans for a very long time. I know that their doctors and nurses are carefully monitoring what's happening and work very

diligently with the patients on this. This is just a technicality, I see it, as something that we need to address and should be able to address fairly simply and swiftly and encourage the committee, once we have the amendment, to take a look at that and hopefully we can get it settled relatively soon. And I'd like to encourage the committee that this session we could take care of this if we can arrive at a compromise that satisfies everyone's interests. And, with that, I'll close. Any questions?

SENATOR WESELY: Thanks. Questions? Don't see any. Thank you, Senator Thompson. That'll close the hearing on LB 1339. (See also Exhibits 3, 6, and 9) Appreciate all your participation in that. We'll now turn to LB 1091. (Pause in the hearing)

SENATOR DIERKS: I think we can get started, Senator Wesely, whenever you're ready.

SENATOR WESELY: Thank you, Senator Dierks. Thank you, Senator Suttle.

SENATOR SUTTLE: You're welcome.

LB 1091

SENATOR WESELY: (Exhibits 1-3) For the record, I'm Don Wesely of the 26th District, introducer of LB 1091, along with Senator Suttle. Aren't you...? Yes. This bill deals with a problem brought to my attention by the Nebraska Nurses Association. And it's an issue that we dealt with a few years ago. Senator Dierks will remember the lay midwives issue which was quite controversial at that time. And, at that time, the difference...a lay midwife is not someone with very extensive training. They have very limited training and there was a desire on their part to perform home deliveries and we studied the issue. One of the handouts, I believe, is a credentialing review of that issue, from 1993. So this is...well, about four and half years ago that we looked at this. What the report actually, as I understand it says, was that certified nurse midwives could, under certain circumstances, perform home births. Those circumstances include screening the mother to identify

risk factors, prenatal care for the mother, assistant having training in the home birth, and then a back-up emergency system. That's one of the issues in this legislation. The other one is the question of over sight by the physician. And for every mid-level practitioner out there, the constant question is what over sight does the physician have. In current statute, there is supervision by the OB-GYN over the certified nurse midwife. This bill calls for collaboration. These issues are brought to your attention because specifically, as I understand it, there's a problem in Norfolk with a certified nurse midwife who can't get hospital privileges. And the feeling was that if there's such an inability by certified nurse midwives to access hospitals to perform their services, that we need to consider the relationship they have with physicians and the barrier for them to perform the services in-home. And that's what the bill proposes. I look forward to the discussion of the matter and be happy to answer any questions.

SENATOR DIERKS: Any questions from the committee? I have a question.

SENATOR WESELY: Sure.

SENATOR DIERKS: The certified nurse midwife is a registered nurse...

SENATOR WESELY: Yeah.

SENATOR DIERKS: ...who is a nurse practitioner?

SENATOR WESELY: Right.

SENATOR DIERKS: And what are the different categories of nurse practitioner today in Nebraska?

SENATOR WESELY: Well, I'm not sure off the top of my head, but what I was going to mention was that I know that they go through the training as a nurse and then they go on for further training. I'm not sure how much longer it is but I know it's quite extensive. So I have a lot of confidence in their training and their skills. The lay midwives, on the other hand, if you remember, had very limited, you know,

maybe a month of reading out of a book, or something, so....

SENATOR DIERKS: But we're changing the word from supervisory to collaborative, is that right? Is that...?

SENATOR WESELY: Right.

SENATOR DIERKS: And this would allow them, then, to...? How would this make it easier for them, for this nurse, to gain access to the hospital in Norfolk?

SENATOR WESELY: Well, I don't know that that helps particularly for that situation. It does give them more independence in their practice so they don't have to have the direct supervision of a physician. But, clearly, by being able to perform their services in the home, they don't need the hospital privileges, as a result, so that is a more direct impact.

SENATOR DIERKS: Other questions for Senator Wesely? Thank you.

SENATOR WESELY: You bet.

SENATOR DIERKS: You may come back and conduct the rest of the hearing.

SENATOR WESELY: Okay, we're ready for proponent testifiers.

GAIL CONSOLI: (Exhibit 4) Hello. My name is Gail Consoli, G-a-i-l C-o-n-s-o-l-i. I live in Norfolk, Nebraska. I am the first nurse midwife in northeast Nebraska and I do believe I am the major reason for this bill. I wrote to Senator Wesely and several other senators on July 1, 1997, asking for any help they might be able to offer because I was not getting hospital privileges. Of course, at that time, it had only been a few months. And then I heard several months later, through the Nebraska Nurses Association, that Senator Wesely may introduce some legislation on my behalf. I need hospital privileges in Norfolk to deliver my pregnant clients. I've had a practice agreement with two OB physicians, as per state statutes. I am building a nice client base but am unable to deliver my pregnant patients. I would even have more OB patients if I

had privileges because my patients know, at this point in time, even though I will be with them in labor for support, when it is time for delivery for the baby I must step aside and let one of my physicians deliver the baby. The Nebraska Chapter of the American College of Nurse Midwives does not support this bill. I am a member of that chapter, however, I feel I must personally speak because I am the reason that this bill is being introduced. I do support the language in this bill that removes the term "supervision" because that is not necessary. We already only practice when we have a practice agreement with a physician, and some physicians even feel that this term "supervision" increases their liability. Fundamentally, I do not wish to do home births. I doubt if I could find a physician that would back me up if I did desire this. We have no birth centers in Nebraska, therefore, my only option is to get hospital privileges. The hospital I'm referring to is Faith Regional Health Services in Norfolk, and this hospital, apparently, does not want any mid-level practitioners privileged. Some OB and family practice physicians in Norfolk do not want to lose clients and, therefore, they view this as loss of revenue. The hospital also has said there are enough OB services and that is why I am not needed. However, since I began to seek privileges in February of last year, two physicians have come to town and they have been granted privileges. I cannot help but feel that we are going backward instead of forward, when I have no protection to allow me to practice. There should be some kind of way to get nurse midwifery to the women of northeast Nebraska and anywhere else that a nurse midwife has a collaborative relationship with a physician. It's hard to believe that nurse midwifery has been legal in Nebraska since 1984. We have only 14 certified nurse midwives in practice today. This really prevents the majority of women access to this type of care. Senator Wesely's bill has brought to the attention of this state that the statutes in Nebraska are very restrictive. Nurse midwives in Nebraska need many things. We need mandatory third-party reimbursement. We need DEA numbers and we need, apparently, some kind of protection from restraint of trade. We need to be allowed to practice in a hospital where our collaborating physicians have privileges. I am rooted in Nebraska. I was born in Lincoln, at Bryan Memorial Hospital, delivered by a Dr. Madsen, my mother told me, and apparently I was the first baby he caught, so my

roots are deep. I moved back to Nebraska in 1979 and have been offered midwifery opportunities in other states over this last year. And even though I do want to practice, I want to stay in Norfolk. This is where my family is, my friends, and my client base that I'm building. Selfishly, all I really want, at this moment, is to be able to practice full-scope midwifery, and the women in northeast Nebraska want and deserve the option of a nurse midwife. I also want certified nurse midwives in the future to join me in Norfolk as my client base builds. These are the reasons that I support Senator Wesely's efforts to get attention brought to my inability to practice and I want to thank Senator Wesely for his efforts and thank you all for listening. Thank you.

SENATOR WESELY: Thank you. We appreciate you coming down. Are there questions? Senator Dierks.

SENATOR DIERKS: Do you think, Gail, that this piece of legislation then would allow you to gain access to the hospital in Norfolk?

GAIL CONSOLI: No, but I think it's definitely brought attention to all the physicians in the state of my plight and possibly some pressure will be brought on the hospital.

SENATOR DIERKS: How many midwife nurse practitioners do you say there are in Nebraska?

GAIL CONSOLI: How many midwives? I have no idea how many nurse practitioners, but...

SENATOR DIERKS: Nurse practitioner midwives, whatever you're...

GAIL CONSOLI: Nurse midwives? There are 14 of us and there are about 5 more soon to graduate, I believe. I am the only nurse midwife that does not have privileges. All the others are...have hospital privileges and deliver their babies in the hospital. And if they don't have hospital privileges, they work under their physician's privileges.

SENATOR DIERKS: Um-hum. These nurse midwife...certified nurse practitioner midwives do...do they all practice pretty much in the metropolitan area?

GAIL CONSOLI: Yes. Omaha, Lincoln, Hastings, and a midwife started practicing in Scottsbluff in August. Yes.

SENATOR DIERKS: So, and then...but do you have a particular physician that you work with?

GAIL CONSOLI: I have two physicians. I began my practice in June. One of those physicians put me through school and is very dedicated to seeing that I stay where I am. I have a contract with this gentleman. I'm not going away.

SENATOR DIERKS: So when you help actually...with the actual delivery, if you help, you have to be with...the doctor has to be with you in the hospital?

GAIL CONSOLI: No, not at all. Not at all.

SENATOR DIERKS: But I mean, under your current situation?

GAIL CONSOLI: The hospital is being extremely difficult and I'm not even supposed to be doing...I don't do any delivery in the hospital. I step aside, the physician catches.

SENATOR DIERKS: I see.

GAIL CONSOLI: Yeah. (laugh)

SENATOR DIERKS: Then do you have the opportunity to practice your profession in the...in homes?

GAIL CONSOLI: No. Well, because of...no, it's illegal. And I do have an office and I do GYN-Well Women exams and I do all the prenatal care up until the point that the woman goes into the hospital.

SENATOR DIERKS: I see.

GAIL CONSOLI: And then, at that time, I do go in and give labor support. But that's not the solution that I'm looking for, you know.

SENATOR DIERKS: I was just...the thought was going through my mind that the service of your profession would...I would

think would be somewhat in demand in under-served areas, particularly rural parts of the state. I wondered if that was taking place?

GAIL CONSOLI: Well, I think part of the problem in Norfolk is that there are several OB providers and the hospital actually even did a study several months ago and they came up with the rationale that there were no more OB providers needed in the Norfolk area. However, I'm not an obstetrician and that's what they were assessing...that was the need they were assessing. And according to the calls I get and the women that come see me, there is definitely a need for nurse midwifery in northeast Nebraska. And I not only draw from Norfolk, but I have women come from up to an hour and a half away in all directions. So...

SENATOR DIERKS: Well, thank you.

GAIL CONSOLI: ...I don't know. Everyone else has talked about amendments. Possibly, we should work on amending this so that there could be some of the things that we need more and, I don't know, but I think the chapter could come up with some things if given the opportunity, that we might change in this bill.

SENATOR DIERKS: Thank you.

SENATOR WESELY: Hang on. Other questions? Can you describe the process of making a decision on privileges in a hospital? Who makes that determination?

GAIL CONSOLI: I think every hospital is different.

SENATOR WESELY: How about your hospital?

GAIL CONSOLI: My hospital? I gave you all a two-page list of what has happened to me over the last year and apparently my privilege request was...I'm not sure if I want to say this...my privilege request was being handled by a physician who has since left the practice, and apparently voted negatively when I thought he had voted positively at an executive committee. This was in February or March and I did not learn this until June, so there's a lot of murky, bad politics in Norfolk. That physician did leave our

practice and I've been told that I was viewed as...well, as somewhat of a threat.

SENATOR WESELY: So it's a committee that makes this determination?

GAIL CONSOLI: There is a committee. There is a credentialing committee that supposedly goes through everything and sees that you have all the needed requirements. That you have, you know, passed the certification exam that your school...that the national certifying agency gives and that you have met all the requirements. And then, in our hospital, there's an executive committee, which I don't think I should have gone to at all, but supposedly my petition was placed before the executive committee and the hospital attorney recommended to the executive committee that, if they were even thinking about voting negatively for my privileges, they should reconsider because it could be construed as conflict of interest, therefore the executive committee, which consists of twelve physicians, passed me to the board of directors. The board of directors met on this, for the first time, I believe, in September or October, and decided at that time not to open a category of registration to mid-level practitioners, which is what they considered me. So, then in November, we asked to present my request, again, to the board. The two physicians I am in practice with came with me to the board of directors meeting and we presented why I wanted privileges and why my services were needed. The committee didn't meet in December. They did meet in January, and in January no one has yet gotten back to me about how the meeting went, but I do believe that they're asking for more information from some university, I don't know which one, that has midwives. So it's really a drug-out process. It's not going anywhere fast.

SENATOR WESELY: And you've had no recent indication of any progress?

GAIL CONSOLI: No.

SENATOR WESELY: Senator Dierks.

SENATOR DIERKS: Could you tell us just exactly what your

education consisted of, after high school?

GAIL CONSOLI: Sure. Oh. That's many years.

SENATOR DIERKS: But, I mean, (inaudible) an R.N., right?

GAIL CONSOLI: Yes. Yes, I was an R.N. for 25 years. I was an R.N. for...

SENATOR DIERKS: That's a three year degree?

GAIL CONSOLI: It was a two year. It was an associate degree. I graduated in California...I began my nursing education in California, completed it in Daytona Beach, Florida. I worked in Daytona Beach for 10 years in intensive care as a nurse, then moved back to Nebraska in 1979. I worked in Norfolk for 17 years at Lutheran Hospital which is the part...it is the hospital now where deliveries take place, but there is a merger of the two hospitals there. It's now called Faith Regional Health Services. I worked there as a labor and delivery nurse for 17 years. During that 17 years, I got my BSN, my bachelors in nursing, from Clarkson College, in Omaha, and I also was a certified childbirth educator through the American Society of Psychoprophylaxis and Obstetrics, and taught Lamaze classes for many years. And then I began my midwifery education with the aid of the physician I'm in practice with, and my school is the Community Based Nurse Midwifery Education Program which is a component of Frontier School of Nurse Midwifery and Family Nursing. It is the oldest nurse midwifery school in the United States and it is in Hyden, Kentucky. I did also, at the same time, get my master's through Case Western Reserve University in Cleveland, Ohio, where the Cleveland Clinic is. And I did my clinical rotation with midwives as my preceptors in Fargo, North Dakota, where I delivered my ladies and did my GYN Training. And my school requires twice as many deliveries as the majority of the schools in the United States, at this time.

SENATOR DIERKS: And how long a period of time was that?

GAIL CONSOLI: Approximately two years. It's a two year program. I finished a little under that because I was

anxious to practice.

SENATOR DIERKS: Okay. Thank you.

GAIL CONSOLI: Um-hum.

SENATOR WESELY: I want to ask again, you...this credentialing committee, board of directors, I understand, the credentialing committee, who is that? Are those all physicians? Are they administrators of the hospital? Who is it? I don't want specific names, just categories.

GAIL CONSOLI: Okay. One person that's on it is a anesthesiologist, and that's the only physician, that I'm aware. I know she is, I believe, the head of that committee. And others are not physicians, I don't believe.

SENATOR WESELY: Who are they?

GAIL CONSOLI: Hospital employees. I don't know exactly their job description.

SENATOR WESELY: Hum, so they're in administration at the hospital or something?

GAIL CONSOLI: I believe so.

SENATOR WESELY: Okay. Thank you. Any other questions? Thanks for coming down.

GAIL CONSOLI: Thank you.

SENATOR WESELY: Appreciate it. Next in support?

ANN OERTWICH: (Exhibit 5) Good afternoon, Senator Wesely, and members of the committee. My name is Ann Oertwich, that's O-e-r-t-w-i-c-h, and I'm appearing today as executive director and registered lobbyist for the Nebraska Nurses Association. We are in support of LB 1091. As this bill has come forward, I've had a lot of time to think about some of the issues in this bill and I'm not going to reiterate verbatim testimony but just capitalize on a couple of the issues. And, quite frankly, I was asked today by one of the press what our position was on home births, and I said, you

know, we actually don't have a position on home births. That is a personal choice issue. But, obviously, this would be, you know, a home birth attended to by a certified nurse midwife so that would be within the realm of the law, based on this bill, so that would be simply a matter of personal choice of the consumer. So I'm not going to speak to you a lot about home births, but I'm going to focus on supervision versus collaboration which are the real issues and physician control of practice. Just to clarify for Senator Dierks, a couple of the things that I think are very confusing in Nebraska, we have three separate statutes governing advanced practice. And that's one of the confusions in the terminology. We have a statute for certified nurse midwives, which is what this bill is proposing to amend. We have the advanced registered nurse practitioner statute, which you all fondly remember as amended in LB 414. And then we also have the certified registered nurse anesthetist statute. Okay? So, we are unique as a state because we're the only state that has these three separate statutes governing advanced practice nursing. They're similar, yet different, in what they ask for or call for in supervision or collaboration. And that really is kind of the fundamental core of what we support in 1091. Moving away from supervision, which implies that the physician would be liable for the practice of the certified nurse midwife, to a collaborative relationship which places that accountability and responsibility for nursing practice squarely on the shoulders of the certified nurse midwife. And I think, again, the issues that Ms. Consoli described to you are clearly those of attempts at physician control of practice. We've had this discussion previously on LB 414. When you have varying degrees of regulatory authority, if you will, in different statutes, there is always an attempt by those, quote, mid-level practitioners with overlapping scopes of practice, to want to have the regulatory authority to be able to practice their full scope. It becomes problematic for the physicians when that seems to be encroaching on their scope of practice. And that's a natural reaction. I think that it's, as we evolve in health care where we have expanded roles, it's a natural progression to evolve our regulatory language to allow for overlapping scopes of practice, and practice in collaboration. I've outlined some issues for you. I know that the certified nurse midwives will probably be testifying against this bill. They're

small in number. And I'm standing here today, or sitting before you, as an advocate for all of nursing simply because when one nursing group moves forward, all of nursing moves forward. I think that, with twelve to fourteen nurse midwives in the state, there is a lot of intimidation by physicians that they should not speak out to change the statutes for practice simply because there are a lot of control issues here. And for those reasons of loosening up the regulatory language to allow accountability and authority for one's own practice, we support this bill.

SENATOR WESELY: Ann, thank you. Are there questions? Yes, Senator Dierks.

SENATOR DIERKS: I guess I got confused again. You talked about someone's going to come in opposition and they're certified nurse midwives?

ANN OERTWICH: Yes, sir.

SENATOR DIERKS: And what is Gail?

ANN OERTWICH: Gail is a certified nurse midwife.

GAIL CONSOLI: (from the audience) And I'm a member of the chapter but I'm also an...individual.

SENATOR DIERKS: Okay. Well, I'll try to work through that as we go along.

ANN OERTWICH: That's okay. I think, Senator Dierks, it just points out that sometimes within a profession not everyone is always in agreement on issues. And I think that the issues raised by 1091, the...and I'm sure we'll be hearing opposition from the physician groups. I know that nurse midwives have been directly confronted by physicians about what are you doing putting this bill forward. So I think there are some serious issues about fear of, you know, relationship issues. I mean, we all know from the nurse practitioner legislation of a couple of years ago, that we're still in the process of mending relationships with our physician colleagues and trying to move forward and work together. And I think a bill like this creates that type of an environment, and sets up barriers...or can set up

barriers to practice.

SENATOR DIERKS: Thanks, Ann.

SENATOR WESELY: Isn't part of it, as was testified earlier, out of the fourteen, all of them but one have privileges, right?

ANN OERTWICH: That would be my understanding, currently.

SENATOR WESELY: So, the rest of them are all taken care of, so the one that isn't, they let them fend for themselves, basically.

ANN OERTWICH: Well, and from an advocacy perspective, my issue is that if suddenly everybody didn't have privileges, then we wouldn't have nurse midwives practicing in Nebraska. And I think that's a concern.

SENATOR WESELY: Senator Suttle.

SENATOR SUTTLE: I'm just very disappointed that I don't see fourteen midwives sitting out here. There's not that many of them. I'm just sorry that they aren't here and I'm glad you're there to advocate for them even if they aren't here.

ANN OERTWICH: Thank you.

SENATOR WESELY: Any other questions? Thank you.

ANN OERTWICH: Thank you.

SENATOR WESELY: Appreciate it. Anybody else wish to testify in support? If not, we'll go to opposition. Anybody wish to oppose?

MARILYN LOWE: Senator Wesely and committee members, my name is Marilyn Lowe and I am a certified nurse midwife in Omaha, Nebraska, and I'm also the legislative chair for the Nebraska Chapter of Nurse Midwives. And, unfortunately, in speaking out on LB 1091 was a very difficult decision for those of us that are certified nurse midwives in the state of Nebraska. But because of the controversy this bill has raised, even though those of us that have a very good

relationship with our physician colleagues, we felt we needed to go on record. Again there's two components to this bill and that's what's caused us the majority of the problem. So, again, this addresses the legislative bill, LB 1091, which would allow certified nurse midwives to attend home births. The certified nurse midwives in the state of Nebraska appreciate the work you've done, Senator Wesely, in helping us advance our practice. However, we do not as a collective...we did not, as a collective group, initiate this bill and we do not feel that LB 1091 addresses or would resolve the issue of hospital privileges as it was intended to do. Because of that, we, as the Nebraska Chapter of the American College of Nurse Midwives, do not, at this time, endorse this bill as it stands. The issue of hospital privileges still needs to be addressed. There are qualified nurse midwives in the state of Nebraska that have practice agreements, that have met all the criteria for practice, and yet are denied privileges at certain hospitals throughout this state. This remains an issue that will require continued dialogue in hopes of coming to a resolution that will allow certified nurse midwives to practice within their full scope of their profession. We realize there are two parts to this bill. But, unfortunately, the negativity that surrounds the issue of home birth within the medical community, has clouded the real issue, that of privileges...hospital privileges, and also the potential changes within the practice agreement, itself, from supervision to collaboration. The hope is that we could overcome this and move forward to address the real issues. The other thing, I guess, I would like to also state is the reason that there are not twelve other...there is another midwife here, most of them have very busy practices. I had to clear an entire schedule today and have someone covering my call and deliveries. It's not easy, when most of us are spread throughout the state, to do that. Is there any questions?

SENATOR WESELY: Questions? Yes, Senator Suttle.

SENATOR SUTTLE: What you're saying is that if...since this bill has been introduced, you've had problems with your...the doctors that supervise you. Is that accurate?

MARILYN LOWE: I would say that it has raised an awfully lot

of dialogue that had nothing to do with hospital privileges or changing our practice agreement, but because of the connotation that goes along with home birth. And so, yes. And when we also look at the fact that there are fourteen nurse midwives in this state, there are two of them currently looking for jobs that are having trouble finding a job because we have to have a practice agreement with a physician. So, again, those things do happen.

SENATOR SUTTLE: Do you really think that doctors will ever say, go right out there kid and deliver those babies?

MARILYN LOWE: In the home?

SENATOR SUTTLE: Anywhere. Whether it's in a hospital or anything. Do they think...do you really believe that there will be a time without this, something like this, that a doctor will say, go out there and practice your profession, and good luck to you?

MARILYN LOWE: As far as, you mean, coming off a practice agreement?

SENATOR SUTTLE: Um-hum.

MARILYN LOWE: I doubt that anyone would say, and in the physician community, go ahead. No. But, again, I think those are all very different issues, home birth, the practice agreement, you know, privileging, all of those have different components to them.

SENATOR SUTTLE: But this is also a collaboration thing.

MARILYN LOWE: It certainly is.

SENATOR SUTTLE: I don't even think doctors want you to have those kind of privileges.

MARILYN LOWE: There are some...

SENATOR SUTTLE: They want you there and that's all the further they want you. I see this as a power struggle.

MARILYN LOWE: Um-hum.

SENATOR SUTTLE: And I see, as most of the...are there any men midwives?

MARILYN LOWE: Not in the state of Nebraska. Throughout the country, there are.

SENATOR SUTTLE: Okay. That's what I mean, in Nebraska. And that's women, again, being put under the thumb of a physician. And you heard how much schooling, I know how much schooling it takes.

MARILYN LOWE: Yes.

SENATOR SUTTLE: Ann is standing up for the nursing profession...

MARILYN LOWE: Right.

SENATOR SUTTLE: ..and advocating for the nurses. I'm disappointed that the midwives are not standing up for themselves.

MARILYN LOWE: It is not a matter of not standing up. Part of the bill we are very much in favor of. The home birth component, right now, again, when we have colleagues that are trying to get jobs though, immediately, maybe in time to come, that will be something, but currently...

SENATOR SUTTLE: But then why didn't you come in as a proponent and say we are for this but at this time we don't want the home section?

MARILYN LOWE: Well, and that is what, essentially, if we can...

SENATOR SUTTLE: But you came in as an opponent.

MARILYN LOWE: Well, if we could eliminate part. But the problem is that, again, this is not necessarily the time, even, for that as we are so small in number. We have a lot of groundwork to do as we are growing and putting our profession together here in this state.

SENATOR SUTTLE: Well, I think you're very limited and I think you could branch out a lot, and if all the midwives are in urban areas, that's...that is very, very sad.

MARILYN LOWE: Oh...

SENATOR SUTTLE: This state is mostly rural.

MARILYN LOWE: Yes.

SENATOR SUTTLE: And if there is anything that this state would benefit from it would be home deliveries in the rural areas by nurse...certified nurse practitioners, I think.

SENATOR WESELY: Other questions? Senator Thompson.

SENATOR THOMPSON: Well, I'm new so I just have to ask a couple of questions out of curiosity. Does the description of the previous testifier about her background and level of education and so forth, is that pretty standard for most of the midwives?

MARILYN LOWE: Yes. Most of us have...and most of the areas that we were coming into require a master's degree. Most of us have anywhere from 15 to 20 some years of OB experience behind us. Some of us even have hours toward doctorate degrees, so I mean, there are a lot of years of education and experience involved.

SENATOR THOMPSON: I'm very, very impressed with the backgrounds that you have. And this is a question that I don't know if you can answer, but how many states do allow midwives to deliver at home?

MARILYN LOWE: Most states, all, but I think there might be two that do not and Nebraska is one of them.

SENATOR THOMPSON: Thank you.

SENATOR WESELY: Are there questions? I'd like to follow up. But I have great admiration for the work that certified nurse midwives have and you know that...

MARILYN LOWE: Um-hum. And you've done an excellent job in

helping us over the years, yes.

SENATOR WESELY: The reason that home births is included is it is the one area that you've already had a review under 407 and been approved. At all three stages of review, there is a recommendation that certified nurse midwives be allowed to do home births. So, you've won that battle in review, under 407. The only thing you've done is lost...I mean what you've lost is a political battle to get it implemented into law.

SENATOR LOWE: Um-hum.

SENATOR WESELY: The issue has been won on the review process that is to be an independent review of that issue back in 1994. So, although you hear raising concern about it, it's obvious that it's...when that argument was made and contested and discussed back in 1993, you won that argument. Now what you face is the political pressure that the physicians can bear on you and the hospitals can bear on you, to not actually implement it.

MARILYN LOWE: Um-hum.

SENATOR WESELY: And I really know that it's not easy for you to come in here and say what you've said. And I hope that we can somehow work, in the future, to try and deal with the problems you face.

MARILYN LOWE: We appreciate that.

SENATOR WESELY: Thanks. Next in opposition?

DAVID BUNTAIN: (Exhibit 6) Senator Wesely, and members of the committee, my name is David Buntain. I'm the registered lobbyist for the Nebraska Medical Association. Dr. Krynn Buckley who is a Lincoln obstetrician-gynecologist had hoped to be here but was unable to be here. And I have a copy of her testimony which describes her concerns, as a physician, with the suggestion that home deliveries be allowed. And I would commend that to you as far as the issue of home delivery. What...there are really three issues that involved in this hearing. The issue that caused the bill to be brought, which is not addressed in the

hearing, and that has to do...or is not addressed in the bill, and that has to do with the question of difficulties and a particular individual getting privileges in Norfolk, and I frankly think that's something that needs to be addressed at the local level or in some other fashion, and that this bill doesn't reach that. The bill, itself, has two components to it as has been described. And, just as background, the committee should be aware, if you're not, that the nurse practitioner bill and the nurse midwife bill were both enacted in 1984. And the reason that I remember that is that's the first year that I lobbied and we had both of those bills and we worked them through. And then it was in 1995 and '96 that the nurse practitioners came back with LB 414. That was...there was a substantial amount of discussion which surrounded that and it was primarily over the issue of defining supervision and collaboration. And you will recall that that issue actually got debated and discussed on the floor of the Legislature in the form of one of the amendments and it was the sense of the Legislature, at that time, that there needed to continue to be physician supervision. Now what happened was, we did make some major modifications in the nurse practitioner bill and I would suggest that if there's a sense that we want to do...make some changes in the nurse midwife bill, it...we ought to try to do it in a way that's consistent with what we did with the nurse practitioner bill and we would not be adverse to doing that. It would require more discussion and a different kind of amendment than would be embodied in this bill. We do have a major problem with home delivery and Dr. Buckley deals with some of the medical aspects of it. If you're interested in this issue, I would suggest that you take a look at the hearing on the bill that was heard in 1994, and unfortunately I don't have the number of the bill here, but I can get it for the committee because, at that time, there were a lot of proponents. We have no consumer advocacy here as we had in the past for home delivery. And we also...there were also several physicians who testified and, in particular, I want to suggest that you take a look at the testimony of Kathy Bliese who is a family physician. At that time she was the head of the Nebraska Academy of Family Physicians, because her background was that she had been a midwife before she became a family physician. And her point was, she had been a midwife in a third world country where they, you know, a lot of times you can't

deliver in hospitals. Why would we want to go in that direction when we have, available to us, hospital facilities for deliveries. We have a fine medical system in this country and why should the health of a child, a newborn, be put at risk because a parent makes a choice to have a delivery at home rather than in the hospital. And the issue comes down to the distinction between what's a low risk pregnancy and what isn't. And obviously there are many instances where babies can be delivered without complications, without problems, at home. But, often, you do not know until the delivery actually begins whether you're going to have problems or not and at that time it's too late to know. And that's really one of the points that Dr. Buckley makes in her letter, as well. So we have very strong concerns about the home delivery aspect of this and we would certainly be willing to continue the dialogue with the nursing profession and with this committee if there's a feeling that we do need to make some changes in this area.

SENATOR WESELY: Okay. Are there questions of Mr. Buntain? Senator Suttle.

SENATOR SUTTLE: Is Dr. Buckley aware of the 407 process that has...that...I didn't know about this either, until Senator Wesely just mentioned that it's already been through the 407 process and it's been approved?

DAVID BUNTAIN: Well...it...I don't think that's a completely accurate statement. For one thing, you have to understand that...

SENATOR SUTTLE: Either it's approved or it's not approved.

DAVID BUNTAIN: Well, you have three reports that were made by the technical review committee by the Board of Health and by the Director of Health. The reports focused on the issue of home delivery...excuse me, of lay midwives and home delivery. There were two components to it. They recommended against credentialing lay midwives. And that was one of the principal motives for it. And the report said if we're going to have home deliveries, then they should be done by certified nurse midwives. And if you read Dr. Horton's report, he goes on and says that if they're going to be done at home there ought to be certain things

that go along with that, including having a hospital backup, having a physician that's involved in the process. And so it's not an either or...

SENATOR SUTTLE: This wouldn't take away that.

DAVID BUNTAIN: It's not an either or kind of thing. The concern we have is that...I...physicians do not want to be put in the position of supervising or being responsible for a delivery in a home. I mean...

SENATOR SUTTLE: They wouldn't be.

DAVID BUNTAIN: Sure they would. Either...whether they're a supervising...

SENATOR SUTTLE: No, they wouldn't.

DAVID BUNTAIN: ...or a collaborating physician, if there's a problem with that pregnancy, the person...you're going to see a malpractice lawsuit against both the nurse midwife and the physician. I mean, that's the risk they run. Hospital would be...I mean, could be conceivably in the same boat. I'm...you know, basically the notion...

SENATOR SUTTLE: How could the hospital be sued when they aren't even in a hospital?

DAVID BUNTAIN: Well, but the notion is that there ought to be some kind of backup arrangement there so in case there is a problem, then the mother and the...

SENATOR SUTTLE: But you just said it was too late if there was a problem and they have already started. I mean, either...

DAVID BUNTAIN: Well, it...but...do you...the question will be sorted out in a court of law...

SENATOR SUTTLE: Right.

DAVID BUNTAIN: ...that...which, you know,...that's the concern that people have.

SENATOR SUTTLE: Senator Wesely, do you have a copy of that 407 hearing? May I see that, at some point?

SENATOR WESELY: It's before you.

SENATOR SUTTLE: Oh. Okay.

SENATOR WESELY: Let me quote from it, Dave, so you know. Maybe you haven't looked at it for awhile.

DAVID BUNTAIN: I've got all of them right here in front of me.

SENATOR WESELY: If you looked at Dr. Horton's report, you'll see that in the summary on the first page, it indicates the technical committee members recommend that lay midwives be licensed to attend at home deliveries and to expand certified nurse practitioners' scope of practice to include home births. So the technical committee recommends that. The Board of Health, then, reviews the record of the technical committee and recommend against licensing lay midwives but recommend in favor of expanding certified nurse midwives' scope of practice to include home births. So that's two that have said that. And then Dr. Horton goes on to say, it is my recommendation that the scope of certified nurse midwives to be expanded to include home births. So all three took the same position. Now there are some criteria. But I resent...I resent the implication that what I said was inaccurate. I said that 407 reviewed this and that they recommended the expansion of certified nurse midwives to include home births. Now, do you deny that?

DAVID BUNTAIN: Yeah, if I said you were...

SENATOR WESELY: Now, do you deny that?

DAVID BUNTAIN: No. If I say you were inaccurate, I misspoke. I think there was...I think that there are some conditions that were attached, particularly in Dr. Horton's report.

SENATOR WESELY: And there are conditions and I will acknowledge that, but that review process came to a similar conclusion, in all three cases, on that point. They

disagreed on lay midwives. And I was in agreement with you on that point. I can understand the difference of opinion on home births. I simply find it, time and again, the difficulty of some of these mid-level practitioners to get credentialing. In some cases, it's understandable. In others, it's not. I don't understand this case in Norfolk. It just seems to me to be restraint of trade and I don't know what to do about it. This bill is probably not the solution. What can we do about it, David?

DAVID BUNTAIN: To me, I mean, this is more of a personal opinion than speaking for the association, I think a lot of what is involved is an educational process. And certainly that's something we talked about a lot when we were talking about nurse practitioners. As more physicians are exposed to the various mid-level practitioners, and I include, you know, physician assistants and others in there as well, and see the benefit that they can have, certainly the physicians that are working with nurse midwives now have very satisfactory relationships with them. They're a valuable part of the healthcare team. And, unfortunately, a lot of these get reported, or they reach kind of a crisis level before they sort of, you know, spill out into the larger community, and so the battle lines are drawn. But, you know, we have tried, as we've become aware of some of these situations to try to work them out, because a lot of it, I think, is just...is a matter of understanding. And, quite frankly, the issue of economic credentialing is not just an issue between professions but we see it within the profession, as well, and, you know, are equally concerned about that. So I'm not here to defend any particular situation but I just don't know that the Legislature can solve...can solve all these problems through legislation. You know, as...frankly, I think as we have gotten more women in the medical profession that that is changing the dynamic in this area, as well, because I think there has been...there has been, as Senator Suttle suggested, an element of sexism. But hopefully that's disappearing.

SENATOR WESELY: How's this been since the Nurse Practitioner Act passed a couple years ago? And we talked, at that time, about better education. Have we seen progress? Are we...?

DAVID BUNTAIN: Well, the way I measure progress is no one has complained to me about it.

SENATOR WESELY: (laughter)

DAVID BUNTAIN: You might ask Ann because she's probably been a little closer to it since then. But, my...I think I've kind of held my breath after we did that and created the new board. But...you know, I'm not aware of problems. Now maybe she'll...does she get rebuttal, here?

SENATOR WESELY: She doesn't have anything in her hand to hit you with. (laughter) So it looks pretty good. Senator Dierks, did you have a question. I'm sorry if I...

SENATOR DIERKS: Well, not a question, kind of an observation. I was thinking all during our discussion today about a lady by the name of Rosa Reinke who is long deceased but she was in a midwife out in the Ewing area. And I had a grandmother than had nine children and another grandmother that had eight, and they were all delivered by midwife. Every chiid survived and it was...I mean, but I realize we have better facilities today and places to do this without infection, and I mean, somewhat of a sterile atmosphere, and I understand the necessity for those things to happen. But, I, too, think there ought to be a middle of the road thing here and take advantage of the education that these folks have had. Thank you for my soapbox.

SENATOR WESELY: Other questions? Dave, thank you.

DAVID BUNTAIN: Thank you.

SENATOR WESELY: Appreciate it. Thanks for coming by. As Roger is coming forward, how many more were wanting to testify in opposition? Anybody neutral? I guess you'll be the last at bat.

ROGER KEETLE: Oh, good. Good afternoon. For the record, my name is Roger Keetle. I'm a registered lobbyist for the Nebraska Association of Hospitals. I have, for your reading pleasure,prepared statement. (Exhibit 7) And I guess what I would say is is obviously we are, as an association, based on what we now know about the 407 process, very much opposed

to home birth, and we'll site, in here, the reasons why, and will say, mainly, I guess...when we look back at the prior 407, the big controversy there was whether to authorize lay midwives. And that was the issue. Unfortunately, we did not get into that 407 as much as we should have and it...that's just how things go, because we do, as you'll notice from our absence on the laetrile bill, do feel there's a reason for choice. And, at that particular time, when that 407 was going through, there were still some criticisms about hospitals not being receptive to mothers and the need for, you know, the bonding of the parent and the child and all that. So, I guess if there was another 407, I would assure you we'd be very much opposed to home birth. And the reason we would be very much opposed to home birth is, is for that to really work there has to be backup. And it's our position that backup has to be on-site. Oxygen...basically the question is how long can the baby hold its breath and the answer is not very long. And for us to get into the business of being backup to a system that is something that's already probably gone sour, isn't that something that the hospitals are real excited about being involved with. Having some kind of agreement for being backup for someone that you don't have any control over is probably not, you know, usually you like to have some control of your risk to have insurance. And for us to take care, or to be backup to a nurse midwife where we wouldn't have control over what supplies and equipment, what personnel were there, all of the things that are involved with that. It's just something that our hospitals are not excited about getting into the business of being backup for something unless there's control. Now, there is another option here and that is being pursued in other communities and that's freestanding birthing center. And as you will see from my testimony, there is authority for certified nurse midwives, in collaboration with a physician, to, in essence, do this in a physician's office which would, for them to really be able to be into that system, would have to get, basically, accredited as a freestanding birthing center. And I have, in my testimony, what that takes. And it's more than just being at home. It takes a backup staff, it takes a resuscitation cart, it takes the equipment, it takes drills to see how fast you can get to the hospital. It takes an ambulance, on call, with the license (inaudible) with the siren and a red light, the whole bit. Now that may

be the hospitals, there would be grounds and ways to insure that risk, where the hospitals would be willing to provide backup if that was the situation, the delivery site. So, now, let's go back to the issue. And I guess to Gail I will say, persevere. If there's any hospital in the state where I would...that has its concerns right now, it's in Norfolk. If you know, those two hospitals are merging. There are new hospital boards. There are new hospital medical staffs. They are trying to figure out how to get the telephone system to work between the two hospitals. And, unfortunately, the timing of this is terrible, and timing is everything, and unfortunately, this is going to take some time. What I can tell Gail today is, is sooner or later she should get some kind of notification that the hospital board has hired another consultant to look at the issue of lay midwives, and that the issue is far from over. The issue will be considered by the board, not by the physicians, and the decision is going to be based on the best information that's available to that board as soon as they can sort through all of the issues that needed to be sorted out. Now the first thing the hospital did, on this, was make a study on the need for OB services, because let's face it, the result from a nurse midwife and a physician is the same, and that is a healthy baby and child. And that, basically, study showed that their recruiting efforts have been extremely successful, that Norfolk is making the transition into a regional referral center where more specialists are on staff. And there are certain minimum numbers of births that need to be done to assure competency. The study shows that there's too many physicians that are in the business of delivering babies in Norfolk, now, with the addition of the other practitioners that were in the pipeline. What that means for the hospital is if the quality is going to be maintained there's going have to be special emphasis on the quality of care provided in the obstetrics units. It probably means some of the physicians that are delivering babies now, will not be delivering babies because of some kind of standard that's set. So, again, the world's worst place, big transitions in the medical staff, how obstetrics is being done, and alls I can say is is from administration in Norfolk, Faith Regional, the fat lady's not sung yet. And this isn't over. There's lots more to be done and that's...I can't guarantee a result but I can tell you that this is not a done deal. So, with that, my time has

expired. My written testimony's much better. But that's really kind of an explanation of what's going on. I can tell you the board is going by the numbers on how they're doing this, because it is an education process.

SENATOR WESELY: Thanks, Roger. Senator Suttle?

SENATOR SUTTLE: The final report on home births and midwifery, from 1993, says the committee...it says right here, the committee recommended that certified nurse midwives be allowed to attend home births. Members felt that the CNMs have appropriate training to handle home deliveries safely. So why would they go through the 407 process again?

ROGER KEETLE: The issue...Dr. Horton...and we did not appear, the issue that was missed is backup. There are...Horton's report says there are areas of the state where ambulance services don't...couldn't handle this. And what we have found, or what I have found by doing my research is, is in areas where hospitals don't want to do backup, it's for the situations I mentioned, and that is where somebody comes to the hospital and says I want to do backup, and they go, well, gee, are you trained? Do you have supplies, and whatever, and all of the sudden it's the hospital's fault that the midwife can't do home deliveries. Well, that's a situation we're not going to get into. We are opposed to home births. The place to have backup is at the site. The way to do that is through the same requirements as the freestanding birthing center. Those are the standards that ought to be applied. And to say that somebody's going to show up at our doorstep with a bad result, and we're going to, number one, be surprised, be in no position to take care of it, have no physician involved. Huh-uh. No part of that. Unless this backup deal is something we feel is safe, we don't want any part of it.

SENATOR SUTTLE: Okay. What do most hospitals use as their credentialing board? Who's on that?

ROGER KEETLE: Okay.

SENATOR SUTTLE: And why is it such a mystery, to the person it most affects?

ROGER KEETLE: Well, I guess.... The way it works is the hospital board, by law, is responsible for the management of the hospital and there are certain functions that are delegated to the medical staff.

SENATOR SUTTLE: But...but you know that most hospital boards are made up of a lot of business men that check off on whatever the administration tells them to do.

ROGER KEETLE: Yeah, I guess maybe....

SENATOR DIERKS: Is that right?

ROGER KEETLE: Yeah...I...

SENATOR THOMPSON: He said yes several times. I want that on record. I don't know if he meant it that way.

ROGER KEETLE: I guess sometime talk to Jim Moylan who sits on the credentialing committee at St. Joseph's Hospital, privately. But, anyway, let's...I think it's very clear, and especially in this particular situation, where there is a need for the hospitals to handle it very carefully because there is an anti-trust problem here. And what's being done is, is the physicians are not going to make the final decision. The board members are going to make this decision. The best member of a hospital board is the one that has the guts to be on the credentialing committee and to deal with the issues of, okay, you know, the quality assurance committee says we have to do X number of deliveries or birth by every physician or...there's an insurance problem that we've got to establish rules that deal with quality, and that, for better or worse, is not easy, but it's done. And if you've...it's not easy and we do a lot with our volunteers, and praise the Lord for them. But believe me, there are people in the community that, again, praise the Lord, do this. And...

SENATOR SUTTLE: You still haven't answered my question, Roger.

ROGER KEETLE: The credentialing committees can be recommended...can be comprised, basically, of a physician,

or a group of physicians, generally the person at the hospital that's in charge of risk management or quality assurance, and a department heads. There can be different configurations of the credentialing committee. The main thing there, though, is to try and get people, frankly, that have medical expertise but can make decisions on other practitioner's scopes of practice in the hospital and their privileging. And that's why it will vary depending on who's willing to do it, who has the credentials, and trying to get it done right. But it's not...again, it does vary. But the board is responsible for what practitioners practice in the hospital. Everything is a recommendation. There was, at one point in time, where the medical staff and the hospital board had to agree on changing bylaws, and those days are over. The board has final authority on what's going to happen here.

SENATOR SUTTLE: Okay.

SENATOR WESELY: Are there questions? Senator Dierks?

SENATOR DIERKS: Oh, I just...I didn't mean to strike that funny bone, but I was on a hospital board for a number of years and it was an extremely independent group. One of the finest boards I ever served on. And those people, they conducted their business like they conducted...they conducted the hospital business just like they did their own businesses, and they were very, very competent people. And I don't think there was a yes-man in the group. So I think that we had...I think we really had the best interests of the medical community at heart on that hospital board. Maybe that's not true across the state but I really feel...felt very fortunate to have had that experience with the hospital board. It was outstanding. These were all business leaders in the community.

SENATOR WESELY: Other questions? Well, Roger, the problem in Norfolk brought this to our attention, but the one testifier talked about the problems in other hospitals, as well. Do you see some strategy where we can move forward and try to, as Senator, you know, we discussed the possibility with Dave Buntain, of more education, or.... How do we move forward on this, because I get the sense they're stonewalling, and, you know. I understand the thing

about, you have to have repetition and quality's impacted by that. So, I'm not blind to that, and yet, at the same time, you know, options and choices need to be looked at, too, so how do you see us moving forward on this?

ROGER KEETLE: Well, I think what my testimony says is those hospitals that have certified midwives on their staffs have been very...there's no problem with the track record. The training is there. They do a good job. So, as far as the information that's can be provided to other hospital boards, I think that continues to be better. It was probably, in this particular circumstance, a difficult board to educate, because, again, it's a new group of people basically to learn how to work with each other. But, I think the way they are going and the certified nurse midwives are approaching this, is probably the way to go. Let's get the physicians a little more educated and basically do what they're doing. And that's a good job and that's going to show up in any other information that's sought by hospital boards to make the decision of whether to add a new category. Norfolk is a little small and, fortunately, midwives are generally practicing in urban areas and not rural. They seem to be not really being used in rural areas. But that's...at least that's the experience so far.

SENATOR WESELY: Thanks. Any other questions? Roger, thank you.

ROGER KEETLE: Thank you.

SENATOR WESELY: Is there anybody else to testify in opposition?

JEARLYN SCHUMACHER: I'm Jearlyn Schumacher and I'm a certified nurse midwife with Mutual of Omaha Health Plans, Lincoln. I hesitate to actually say that I come out in opposition of this because it's not that nurse midwives oppose home birth. Probably the best thing I heard from one of my colleagues in Hastings, when I talked to her the other night, was that we favor open practice. We would love, at some point, to be able to do home birth. But there are only twelve of us who are working and there are two of us who are unemployed and have no job prospects in this state. So, it's more an issue of priorities than it is of home birth.

And to introduce a home birth bill with our collaborative practice bill takes away from our most important issue which is, for one thing, Gail needs to have her privileges, and we need collaborative practice. That's probably the one thing that affects us on a daily basis. My practice agreement is not with obstetricians. I have a nurse midwife partner. We have two clinics. And there are...one of us is at each clinic. And our practice agreement is with four family practice physicians. That works very well. There is some misinformation that I have heard just in listening to various people talk. One is that nurse midwives...that it's a benefit that nurse midwives practice in urban areas. Well, it is an advantage, but actually nurse midwives do some of their best work in less populated areas where they have trouble attracting medical care. Where they have problems attracting a family practice physician who continues to do OB, because those physicians are getting out of OB. They don't want to do it anymore. They don't do enough to keep their skills up. On the other hand, we are highly trained, most of us, labor and delivery nurses. We've been doing this for a long time. Plus we have the added benefit of the midwifery education and this is all we do. We have a very limited scope of practice which allows us to do well-woman OB-GYN care. But for us, this has become a matter of priorities. You know, to us, to our chapter, we support Gail. She needs her privileges. However, to introduce a home birth bill at this point is inflammatory with our physicians and it destroys the relationship that we've really had a hard time building. Joanne Bronson is the midwife who has been practicing in Lincoln the longest. She's been here five years. I've been in practice three years. So, we've not been here very long and we don't want to lose the advantages that we've already set up for ourselves.

SENATOR WESELY: Thank you.

JEARLYN SCHUMACHER: Um-hum.

SENATOR WESELY: Questions? Thanks for sharing that.

JEARLYN SCHUMACHER: Um-hum.

SENATOR WESELY: Appreciate it. Anybody else in opposition?

Anybody neutral?

CAROL MCSHANE: Hi. I'm Carol McShane. I am a clinical nurse specialist, in private practice in Lincoln. And I testify in a neutral position in this sense, that I think we have to be real careful with choice of language. The choice of language that says that a midwife, a nurse midwife, a nurse practitioner, and a nurse anesthetist, or a clinical nurse specialist, as myself, is a mid-level professional, or practitioner, is a very poor choice of words. We have also been called physician extenders. I consider those very poor choices of words. And I would just like to put into the record that a nurse in these positions has long years of not only education but practice. And I, for one, consider myself a nurse expert, and I also consider the nurse midwives, the nurse anesthetists, the nurse practitioners, nurse experts. We are mid-level nothing. Thanks.

SENATOR WESELY: Thanks, Carol. Any questions? Thanks for coming. Anybody else neutral? If not, I'll waive closing. That'll end the hearing on LB 1091 and hearings for today. Thank you all for you participation.

Disposition of Bills:

LB 1165 - Indefinitely postponed.
LB 1140 - Advanced to General File.
LB 1339 - Advanced to General File, as amended.
LB 1091 - Advanced to General File, as amended.

Chairperson

Committee Clerk